

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

SECURITIES AND EXCHANGE )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
KEVIN B. MERRILL, et al., )  
 )  
Defendants. )

Case No.: 1:18-cv-02844-RDB

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**RECEIVER GREGORY S. MILLIGAN’S MOTION FOR DECLARATORY  
RELIEF ON LIEN PRIORITY AND EQUITABLE SUBROGATION**

Receiver Gregory S. Milligan (the “Receiver”) respectfully submits this motion (the “Motion”) for entry of an order declaring that, pursuant to the doctrine of equitable subrogation, Receivables Portfolio Interchange, Inc. (“Receivables Portfolio”) is entitled to a first priority lien on certain real property held by the Receivership Estate,<sup>1</sup> located at 1132 Glade Road, Colleyville, Texas 76034 (the “Glade Road Property”), ahead of all other lienholders. The facts and circumstances supporting this Motion are set forth in the Declaration of Gregory S. Milligan (the “Milligan Declaration”), attached hereto as **Exhibit A**. In further support of this Motion, the Receiver states as follows:

**I. BACKGROUND**

1. On October 29, 2007, King Fischer, Ltd. d/b/a LP Investments, Ltd. (“King Fischer”) granted a Contract for Improvements with Deed of Trust and Power of Sale on the Glade Road Property to First Financial Bank, N.A. (“First Financial”) in the principal amount of \$1,460,000.00 (the “First Mortgage”). See Milligan Declaration at ¶ 3. The First Mortgage was

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<sup>1</sup> The term “Receivership Estate” shall have the meaning ascribed to it in the Receivership Order (defined below).

recorded on November 5, 2007 as document number D207393791 in the Real Property Records of Tarrant County, Texas, a certified copy of which is attached as **Exhibit A-1**. *Id.*

2. On August 29, 2012, King Fischer entered into a Loan Modification Agreement with First Financial, extending the maturity date of the First Mortgage to August 29, 2013. *See* Milligan Declaration at ¶ 4. On August 29, 2013, King Fischer entered into a second Loan Modification and Extension Agreement with First Financial, extending the maturity date to August 29, 2014. *Id.* On April 20, 2014, King Fischer entered into a third Loan Modification and Extension Agreement with First Financial, extending the maturity date to April 20, 2015. *Id.* As of April 20, 2014, the unpaid principal on the First Mortgage was \$1,161,374.03. *Id.*

3. On July 11, 2012, King Fischer granted a Deed of Trust and Security Agreement on the Glade Road Property to First Financial in the principal amount of \$750,000.00 (the “Second Mortgage”). *See* Milligan Declaration at ¶ 5. The Second Mortgage was recorded on November 5, 2012 as document number D212272736 in the Real Property Records of Tarrant County, a certified copy of which is attached as **Exhibit A-2**. *Id.*

4. On August 29, 2013, King Fischer entered into a Loan Modification and Extension Agreement with First Financial, extending the maturity date of the Second Mortgage to August 29, 2014. *See* Milligan Declaration at ¶ 6. On April 20, 2014, King Fischer entered into a second Loan Modification and Extension Agreement with First Financial, extending the maturity date to April 20, 2015. *Id.* As of April 20, 2014, the unpaid principal on the Second Mortgage was \$358,519.67. *Id.*

5. On October 24, 2012, King Fischer granted a Deed of Trust and Security Agreement on the Glade Road Property to First Financial in the principal amount of \$51,117.16 (the “Third Mortgage”). *See* Milligan Declaration at ¶ 7. The Third Mortgage was recorded on

November 6, 2012 as document number D212273629 in the Real Property Records of Tarrant County, a certified copy of which is attached as **Exhibit A-3**. *Id.*

6. On August 29, 2013, King Fischer entered into a Loan Modification and Extension Agreement with First Financial, extending the maturity date of the Third Mortgage to August 29, 2014. *See* Milligan Declaration at ¶ 8.

7. On December 18, 2013, Frost Bank filed an Abstract of Judgment against King Fischer, Jay B. Ledford, and Neil A. Patel, recorded as document number D213316737 in the Real Property Records of Tarrant County, in the amount of \$5,990,247.61 (the “Frost Judgment”), a certified copy of which is attached as **Exhibit A-4**. *See* Milligan Declaration at ¶ 9.

8. On April 20, 2014, King Fischer entered into a second Loan Modification and Extension Agreement with First Financial, extending the maturity date of the Third Mortgage to April 20, 2015. *See* Milligan Declaration at ¶ 10. As of April 20, 2014, the unpaid principal on the Third Mortgage was \$46,972.28. *Id.*

9. As of April 20, 2014, the combined unpaid principal on the First Mortgage, Second Mortgage, and Third Mortgage totaled \$1,566,865.98 (collectively, the “First Financial Mortgages”). *See* Milligan Declaration at ¶ 11.

10. On July 1, 2016, Receivables Portfolio advanced the amount of \$1,663,792.59 to pay the First Financial Mortgage in full, which resulted in First Financial releasing its liens for the First Financial Mortgages. *See* Milligan Declaration at ¶ 12; *see also* Cashier’s Check from Receivables portfolio to First Financial, a copy of which is attached as **Exhibit A-5**; Releases of the First Financial Mortgages, certified copies of which are attached hereto as **Exhibits A-6, A-7, and A-8**. Based on the Receiver’s review of the record, the Receivables Portfolio funds used to pay off King Fischer’s mortgages were obtained by Jay Ledford from claimants in this SEC Action

and were transferred through Receivables Portfolio to satisfy King Fischer's debt. *Id.*

11. On September 13, 2018, the Securities and Exchange Commission (the "SEC") filed a Complaint against Kevin B. Merrill, Jay B. Ledford, Cameron R. Jezierski, Global Credit Recovery, LLC, Delmarva Capital, LLC, Rhino Capital Holdings, LLC, Rhino Capital Group, LLC, DeVille Asset Management LTD, and Riverwalk Financial Corporation (collectively, the "Defendants"), which instigated this action, and requested a temporary restraining order, preliminary injunction, and appointment of a receiver. *See* Dkt. No. 1.

12. On September 13, 2018, the Court entered the Order Appointing Temporary Receiver appointing Gregory S. Milligan to be the Receiver for the Receivership Parties. *See* Dkt. No. 11. On November 27, 2018, the Court entered the First Amended Order Appointing Temporary Receiver clarifying and modifying the Receiver's authority. *See* Dkt. No. 62. On September 14, 2021, the Court entered the Second Amended Order Appointing Temporary Receiver (the "Receivership Order") further clarifying and modifying the Receiver's authority. *See* Dkt. No. 484.

13. The Court appointed the Receiver with the goal of marshalling and preserving the assets of the Receivership Estate and to maximize the recovery for the defrauded investors.

14. The assets of the Receivership Estate include all assets held, managed, owned, or controlled by the Defendants, or any entities they owned or controlled, which includes K.B. Merrill Associates, Financial Reclamation Group LLC, Halo Credit Solutions LLC, JBL Holdings LLC, Jay B. Ledford, P.C., the Joseph Finance Company, Leddy Bear LTD, Ledford & Associates, PLLC, ***King Fischer LTD d/b/a LP Investments LTD***, NLEX, Inc., ***Receivables Portfolio Interchange, Inc.***, Riverwalk Capital Investments, Inc., Riverwalk Credit Solutions, Inc., Riverwalk Debt Solutions, Inc., Riverwalk Fixed Asset Group LLC, SCUSA Financial, Inc.,

Vaquero Asset Management, Inc., CRJ Holdings LLC, Centurion Capital Corporation, GCR CBL CP I, LLC, GCR CBL CP II, LLC, GCR CBL CP III, LLC, GCR CBL CP IV, LLC, GCR HCP Holdings I, LLC, GCR Mercer Holdings, LLC, J Trust, and the Kevin B. Merrill Revocable Trust (the “Receivership Parties”). *See* Dkt. No. 484 at ¶ 1 (emphasis added).

15. The Receivership Order requires the Receiver to “manage, control, operate, and maintain the Receivership Estate and hold in his possession, custody, and control all Receivership Assets pending further Order of this Court.” *See* Dkt. No. 484 at ¶ 8(C). The Receivership Order further requires the Receiver to “take such action as necessary and appropriate for the preservation of Receivership Assets or to prevent the dissipation or concealment of Receivership Assets,” including, but not limited to, selling Receivership Assets. *See* Dkt. No. 484 at ¶ 8(G).

16. On March 8, 2019, the Receiver filed the Motion for Approval of Procedures for Sale of Real Property and Retention of Sotheby’s International Realty, Inc. as Broker (Dkt. No. 107) in this SEC Action, and Frost Bank received a copy of the pleading—through its counsel in the lawsuit that resulted in the Frost Judgment—as noted in the Certificate of Service. *See* Dkt. No. 107 at 12. Every subsequent pleading the Receiver has filed in the case has been served on Frost Bank through its counsel in the lawsuit that resulted in the Frost Judgment, including the Motion for Order Setting Claims Bar Date, Establishing Claims Procedure, and Approving Notification Process (Dkt. No. 395) (the “Claims Procedure”). *See* Dkt. No. 395 at 27.

17. Currently, the real property of the Receivership Estate includes the Glade Road Property. The Receiver has reviewed the claims register, and Frost Bank did not file a claim in this SEC Action pursuant to the Claims procedure. *See* Milligan Declaration at ¶ 14.

## II. REQUESTED RELIEF

### A. Legal Standard for Equitable Subrogation.

18. Subrogation is the substitution of one person in the place of another. *See Rinn v. First Union Nat. Bank of Maryland*, 176 B.R. 401, 407 (D. Md. 1995) (citing 73 Am.Jur.2d *Subrogation* § 1 at 598 (1974); Sheldon, *The Law of Subrogation*, § 1 (1st ed. 1882)). Subrogation is an equitable doctrine. *See Rinn*, 176 B.R. at 407 (“Originating in equity, the doctrine’s operation at law is governed by equitable principles.”).

19. Subrogation is intended to “provide relief against loss to a meritorious creditor who has paid the debt of another,” and to obtain an equitable adjustment between parties “by securing the ultimate discharge of a debt by the person who in equity ought to pay for it.” *Id.* Once applied, equitable subrogation places the party paying the debt in the shoes of the original creditor. *See id.* at 408. “The party subrogated acquires all the rights, securities, and remedies the creditor has against the debtor and is regarded as constituting one and the same person with the creditor whom he succeeds.” *Id.*

20. Equitable subrogation is a doctrine controlled by the state law of the state in which the asset in question is located. *See id.* (“[S]ubrogation has been consistently upheld by courts in each of the states in which the subsidiaries’ assets are located—Maryland, Delaware, and Virginia—and thus whose laws control this proceeding.”).

21. Texas courts—where the Glade Road Property is located—are particularly hospitable to the doctrine of equitable subrogation. *See Murray v. Cadle Co.*, 257 S.W.3d 291, 299 (Tex. App.—Dallas 2008, pet. denied). “Texas courts have also given the doctrine ‘a liberal application . . . broad enough to include every instance in which one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity and good conscience

should have been discharged by the latter.” *Id.* (quoting *Forney v. Jorrie*, 511 S.W.2d 379, 386 (Tex. Civ. App.—San Antonio 1974, writ ref’d n.r.e.)).

22. There are two key elements to equitable subrogation: (i) the person whose debt was paid was primarily liable on the debt; and (ii) the claimant paid the debt involuntarily. *See Murray*, 257 S.W.3d at 299. The burden is on the party claiming equitable subrogation to establish that he is entitled to it. *Id.* at 300.

23. “Additionally, each case turns on its own facts when the issue is one of purely equitable subrogation.” *Id.* The trial court must balance the equities in view of the totality of the circumstances to determine whether a party is entitled to equitable subrogation. *See id.* Factors a court may consider in conducting this balancing test are the negligence of the party claiming subrogation, whether that party had notice of the intervening lien, and whether the intervening lienholder will be prejudiced if equitable subrogation is allowed. *Id.*; *see also Fleetwood v. Med Ctr. Bank*, 786 S.W.2d 550, 555 n.2 (Tex. App.—Austin 1990, writ denied) (“*Fleetwood P*”).

24. The determination of whether subrogation prejudices intervening interests is made “as of the time of the transaction supporting subrogation.” *Med Ctr. Bank v. Fleetwood*, 854 S.W.2d 278, 286 (Tex. App.—Austin 1993, writ denied) (“*Fleetwood II*”). “The consequences of subsequent transactions or events . . . are not relevant to this inquiry.” *Id.* A junior lienholder does not suffer prejudice merely because it is not elevated in priority. *See id.*

**B. Receivables Portfolio is Entitled to First Priority Lien Status.**

25. On July 1, 2016, Receivables Portfolio, a Receivership Party, advanced the amount of \$1,663,792.59 to pay the First Financial Mortgages, on which King Fischer was solely liable, in full. *See Providence Inst. for Sav. v. Sims*, 441 S.W.2d 516, 519 (Tex. 1969) (“[A] person is not entitled to subrogate to the rights of a creditor until the creditor’s claim against the debtor has

been satisfied or paid in full.”). As stated above, these funds were obtained by Jay Ledford from claimants in this SEC Action and were transferred through Receivables Portfolio as a mere vehicle to satisfy King Fischer’s debt. *See* Milligan Declaration at ¶ 10.

26. Further, the Receivership Party paid off the First Financial Mortgages “involuntarily.” Based on the Receiver’s review of the records, King Fischer did not provide any benefit or consideration to Receivables Portfolio in return for Receivables Portfolio’s payment of this debt. Milligan Declaration at ¶ 12. Rather, the individual Defendants made the transfer from Receivables Portfolios to the detriment of claimants in this SEC Case and not for the benefit of Receivables Portfolio. Receivable Portfolio, a corporation held captive by the principal(s) of a Ponzi Scheme, did not make the payment voluntarily. *See Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 190 (5th Cir. 2013) (“the knowledge and effects of the fraud of the principal of a Ponzi scheme in making fraudulent conveyances of the funds of the corporations under his evil coercion are not imputed to his captive corporations.”). *See also Eberhard v. Marcu*, 530 F.3d 122, 132 (2d Cir. 2008) (Returning assets to a receiver, finding that because the bad guy controlled the receivership entity, the transfers were, in essence, coerced.) (quoting *Scholes v. Lehmann*, 56 F.3d 750 (7th Cir. 1995)).

27. Additionally, granting subrogation to Receivables Portfolio would not create an inequitable result because no other lienholders would be prejudiced. Indeed, the resultant positions of the other lienholders are no different than they would have been had First Financial’s prior recorded mortgages on the Glade Road Property not been satisfied with the proceeds from the non-debtor Receivership Party, Receivables Portfolio. Thus, the Court’s application of equitable subrogation here will not alter or harm any other lienholder’s priority expectations in this matter.

28. Moreover, the Receiver gave notice of the Claims Procedure to Frost Bank, and



Frost Bank failed to file a claim related to the Frost Judgment or its Lien on the Glade Road Property. *See* Milligan Declaration at ¶ 14. Additionally, in the event the Glade Road Property sells for more than \$1,663,792.59, Frost Bank will receive all excess proceeds above that amount.

29. If the Court does not enter relief equitably subrogating Receivables Portfolio into the first lien position previously held by First Financial, then the Receivership Estate will not recover any amount from the sale of the Glade Road Property because the Frost Judgment greatly exceeds the fair market value for the Glade Road Property, which is estimated to be approximately \$2 million dollars. *See* Milligan Declaration at ¶ 15.

30. Consequently, the Receiver seeks declaratory relief that, pursuant to the doctrine of equitable subrogation, Receivables Portfolio is entitled to a first-priority lien on the Glade Road Property in the amount of \$1,663,792.59, which was the amount that Receivables Portfolio paid to First Financial from funds obtained from the defrauded investors in this SEC Action.

31. The Receiver is serving a copy of this Motion on Frost Bank through its registered agent with the Texas Secretary of State—the state in which it is incorporated—and its counsel in the lawsuit that resulted in the Frost Judgment. *See* Certificate of Service below.

### **III. PRAYER**

WHEREFORE, Receiver Gregory S. Milligan respectfully requests that this Court enter an order (i) declaring that, pursuant to the doctrine of equitable subrogation, Receivables Portfolio Interchange, Inc. is entitled to a first-priority lien in the amount of \$1,663,792.59, ahead of all other lienholders, on the Glade Road Property; and (ii) granting such other relief as the Court deems just and proper.

Date: May 23, 2022

Respectfully Submitted,

/s/ Lynn H. Butler

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*Counsel for Receiver Gregory S. Milligan*

**CERTIFICATE OF SERVICE**

On May 23, 2022, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court for the District of Maryland, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically through the Court's CM/ECF filing system for all parties who have registered to receive electronic service. Additionally, the foregoing document was served on the following parties not registered for Court's CM/ECF filing system as indicated below:

**Defendant Kevin B. Merrill (via U.S. Mail):**

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**Dundalk United Methodist Church (U.S. Mail):**

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**Lienholders, Tax Assessors, and Other Interested Parties (U.S. Mail):**

Florida Community Bank, N.A.  
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Naples, Florida 34109

Mortgage Electronic Registration Systems, Inc.  
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Flint, Michigan 48501-2026

Collier County, Florida Tax Assessor  
3291 Tamiami Trail East  
Naples, Florida 34112

Maryland Department of Assessments & Taxation  
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Baltimore, Maryland 21201-2395

Branch Banking and Trust Company,  
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Talbot County Courthouse  
11 North Washington Street, Suite 9  
Easton, Maryland 21601

HSBC Bank USA, National Association, as trustee of  
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c/o Howard n. Bierman, Trustee  
c/o Select Portfolio Servicing, Inc.  
3815 Southwest Temple  
Salt Lake City, Utah 84115

Clark County, Nevada Tax Assessor  
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*/s/ Lynn H. Butler*

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